



July 17, 2017

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**VIA HAND DELIVERY**

Administrative Law Judge Christopher Larsen  
United States Department of Labor  
Office of Administrative Law Judges  
Federal Building  
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San Francisco, CA 94103-1516

Erin Connell

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Re: OFCCP v Oracle America, Inc.  
OALJ Case No. 2017-OFC-00006

RECEIVED

JUL 17 2017

Office of Administrative Law Judges  
San Francisco, Ca

Dear Judge Larsen:

I write on behalf of Oracle America, Inc. ("Oracle") in response to the Office of Federal Contract Compliance Programs' (OFCCP) letter dated July 14, 2017.

As an initial matter, we were surprised that OFCCP contacted you, when the parties are in the midst of active meet and confer discussions regarding the very issues raised in its letter, especially without first advising Oracle that OFCCP was abandoning that process. More specifically, Oracle addressed these issues in newly-amended discovery responses ("Amended R&Os") and two, extensive and contemporaneous meet and confer letters served on OFCCP a mere 48-72 hours before OFCCP's letter. Oracle's letters address the issues OFCCP raises here, provide legal authority for Oracle's positions, request a narrowing of the broad discovery requests at issue, and offer to prioritize Oracle's document production to accommodate OFCCP's preferences. OFCCP has not responded to this correspondence or engaged with Oracle to discuss any of the foregoing. Indeed, because OFCCP's letter misstates some of Oracle's positions addressed and explained in its letters, it appears that OFCCP's letter to you was prepared well in advance of July 14, and before considering Oracle's most recent positions.

At the same time, OFCCP and Oracle are still engaged in extensive meet and confer conversations regarding Oracle's discovery requests to OFCCP, several of which will likely result in an impasse in short order. Accordingly, as described more fully below, Oracle respectfully requests that the Court set a discovery schedule by which both parties must complete the outstanding meet and confer process, and bring any remaining discovery disputes to the Court for resolution.



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### **The Employee Contact Information Issue Is Suitable for the Court's Review**

Although most of the issues identified in OFCCP's July 14 letter are not yet ripe for this Court's review and would benefit from further meet and confer between the parties, OFCCP is wholly unwilling to compromise or negotiate when it comes to employee contact information. Instead, OFCCP insists Oracle must turn over the personal contact details for "all current and former employees in the PT1 job group and Product Development, Information Technology, and Support lines of business," including home address, home phone number, mobile phone number, and home/personal email address. (Emphasis added.) Given the overbreadth and undue burden of OFCCP's request, combined with the overly intrusive impact on the privacy rights of Oracle's employees, Oracle agrees this matter should be resolved through briefing and a ruling from the Court.

### **OFCCP's Proposed Schedule and Additional Requests Should Be Addressed through Further Meeting and Conferring between the Parties**

The other requests in OFCCP's July 14 letter – namely, OFCCP's requests for all emails from three Oracle employees, OFCCP's requests for "analyses" it incorrectly states Oracle was required to conduct, and a unilateral production schedule dictated by OFCCP but applicable only to Oracle – are issues over which the parties are still actively negotiating.

For example, with respect to the emails at issue in OFCCP's letter, the requests for those emails are patently overbroad and disproportionately burdensome.<sup>1</sup> In correspondence dated July 11, 2017, Oracle offered to work with OFCCP—perhaps through review and production of a sample set of

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<sup>1</sup> As explained in Oracle's July 11, 2017 meet and confer letter, OFCCP's insistence that its requests are tailored to obtain "relevant emails" because they only seek all communications "related to" certain topics is unavailing where the topics are so broadly defined as to encompass the entire scope of that person's job. For example, for Larry Lynn and Chantal Dumont, the persons responsible for overseeing Oracle's college recruiting process, a request for "all communications *related to* hiring college recruits" is tantamount to a request for their entire email inboxes. Similarly, a request to Joyce Westerdahl, Oracle's Global Head of Human Resources, that seeks all communications "related to: hiring, compensation, promotions, diversity or affirmative action, race, gender, national origin, or complaints regarding discrimination . . . , retaliation, unfair treatment, unfair compensation, and/or hostile work environment" is not limited in any meaningful way to obtain documents relevant to this case.



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emails—to find a way to tailor the request so that Oracle can respond with relevant documents. Instead of meeting and conferring with Oracle on these points, OFCCP filed its letter with the Court. Similarly, with respect to the requests seeking “mandated analyses,” Oracle has asked OFCCP for further clarification regarding these requests multiple times – both in writing and orally. OFCCP has refused to respond to Oracle’s requests, which very well could resolve the dispute short of motion practice.

Finally, OFCCP’s request for a production schedule is premature. Both sides are still negotiating over several outstanding requests, which will impact the scope of document review and production. It makes no sense to impose arbitrary production deadlines – particularly applicable to one party only – when the scope and burden associated with that production remains unsettled.

#### **Oracle Requests a Discovery Briefing Schedule**

Notwithstanding OFCCP’s premature letter to you, Oracle acknowledges that there are outstanding discovery issues—on both sides—that likely will require ALJ review in the near future. For example, while OFCCP complains that Oracle will not produce *all* emails from certain witnesses, OFCCP itself has not committed to producing any documents that do not happen to reside in its “investigative file,” including but not limited to the statistical analysis upon which OFCCP’s claims are based, and the notes it took during interviews with dozens of Oracle managers and employees. OFCCP also refuses to commit to providing any 30(b)(6) witnesses whatsoever, even though Oracle already prepared and produced nine witnesses located in six cities throughout the country. Moreover, despite Oracle’s attempts to address these issues with OFCCP, OFCCP has repeatedly stalled, stonewalled, cancelled and/or delayed discussions, in sharp contrast to the sudden flurry of demands from OFCCP in the last two weeks over its requests to Oracle.

Accordingly, Oracle requests that the Court set a schedule to assist the parties in resolving all outstanding discovery disputes, including employee contact information. Such a schedule will ensure a more efficient meet and confer process, and allow the Court to render an omnibus discovery order on all discovery impasses, as opposed to ad hoc issues. It also will have the desirable effect of discouraging a party from aggressively pushing its own discovery agenda while delaying and stonewalling in response to those of its opponent. As an initial proposal, Oracle respectfully suggests the following schedule:



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- July 28, 2017: Each party will complete its meet and confer efforts for discovery disputes that currently exist;
- August 1, 2017: Each party will submit to the Court a letter briefly identifying the outstanding discovery disputes with which it needs the Court's assistance; and
- August 8, 2017: The parties will participate in a meet and confer conference call with the Court, at a time convenient for the Court, during which the Court can establish any briefing schedule it deems appropriate to resolve outstanding issues.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read 'Erin M. Connell'.

Erin M. Connell, Esq.

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